

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

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ALTIPLANO, INC.,

Plaintiff,

v.

ALTIPLANO INSULATION, INC.

Defendant.

Docket No. 5:16-cv-279

COMPLAINT

NOW COMES Altiplano, Inc., by and through its attorneys, Dinse, Knapp & McAndrew, P.C. and complains as follows:

INTRODUCTION

Plaintiff Altiplano, Inc. ("Altiplano") is a Vermont corporation that sells clothing, jewelry and handbags that it identifies with its trademark ALTIPLANO. Altiplano was incorporated in July of 1993, and its principals have been using the ALTIPLANO trademark since at least 1988.

In addition to the goods it sells, Altiplano's mark is also associated with its service and long term commitment to indigenous communities in Guatemala, where it provides fair wage employment to rural artisan and cooperative groups, and promotes the sale of handmade products through its wholesale channels and extensive network of national and international distributors. Altiplano's mark is also associated with educational services, namely, working with

cooperative groups; conducting fair trade workshops; and participation in partnerships that support family nutrition, environmental education and reforestation programs in the region.

Sometime after 1999, Defendant Altiplano Insulation, Inc. ("Altiplano Insulation") started to sell clothing products similar to Altiplano using the trademark ALTIPLANO INSULATION with a design of a mountain range. Sometime around 2010, Altiplano Insulation abandoned the ALTIPLANO INSULATION mark, began using the design mark ALTIPLANO with a design of a llama and started to sell clothing products similar to Altiplano's products throughout the United States. Since then, Altiplano Insulation has also begun to use the word mark ALTIPLANO and has filed an application for registration of the word mark ALTIPLANO.

Altiplano has superior proprietary rights in the ALTIPLANO mark and Altiplano Insulation's use of the design and word mark ALTIPLANO violates The Lanham Act because it falsely designates the origin of its products. Altiplano Insulation is also violating common law trademark and unfair competition laws. This suit seeks permanent injunctive relief and damages for Altiplano Insulation's actions.

THE PARTIES

1. Plaintiff, Altiplano, Inc. is a corporation organized and existing under the laws of Vermont and having an office in Brattleboro, Vermont. It has been engaged in the distribution and sale of clothing, jewelry and handbags in the United States since at least 1992.

2. Upon information and belief, Altiplano Insulation, Inc. is a corporation or other business entity which maintains a place of business in Masonville, Colorado.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 & 1338, and 15 U.S.C. § 1121. This Court has supplemental jurisdiction over the state law and common law claims under 28 U.S.C. § 1367(a).

4. This Court has personal jurisdiction over Altiplano Insulation by virtue of the fact that upon information and belief, it solicits business in this State and has committed a tortuous act within the State by committing an act of infringement and unfair competition.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

ALTIPLANO'S USE OF THE ALTIPLANO MARK

6. Altiplano is the owner of U.S. Trademark application serial number 86/468623 for the trademark "ALTIPLANO" and has utilized its mark in commerce since at least as early as July 2, 1993 in association with goods in International Class 25: belts; hats; scarves; shirts; and ponchos; International Class 18: handbags; and International Class 14: jewelry.

7. The principals of Altiplano, Inc., John von Wodtke and Shari Zarin began using the ALTIPLANO trademark to identify the goods described above at fairs and festivals throughout Vermont, New York and New England in 1988 and then incorporated the business as Altiplano, Inc. in 1992.

8. The principals of Altiplano, Inc. started attending wholesale trade shows in New York City in 1992. From the first trade show and onward it established retail store accounts throughout the United States. At that time, it began to sell goods throughout the United States under the trademark ALTIPLANO. Since 1992, Altiplano's use of its mark to identify jewelry,

handbags, and clothing has been recognized as a source indicator for its goods by distributors, retailers and consumers across the nation, and its use of the mark has been continuous and has continued to expand in interstate commerce. The trademark is attached to the goods via a tag or label.

9. Altiplano, Inc. was incorporated under the laws of the state of Vermont in July of 1993.

10. Altiplano, Inc. began producing catalogues for wholesale sales of its goods in 1993. It mailed its wholesale catalogues throughout the United States.

11. Altiplano, Inc. supplemented its wholesale business in Vermont when it opened a retail shop in Brattleboro, Vermont in 2004.

12. In 2010, Altiplano, Inc. began selling its goods nationwide via the internet.

13. The ALTIPLANO trademark is a well known trademark that is widely recognized by the trade and the public as a trademark that has built up extensive goodwill.

14. Since the inception of its use the ALTIPLANO trademark has been used by Plaintiff Altiplano only in connection with the finest quality premium clothing, handbags and jewelry. The ALTIPLANO trademark is inherently distinctive to the public and the trade with respect to clothing, handbags and jewelry. Upon information and belief, in the United States, the ALTIPLANO trademark has served primarily as a designator of origin of products emanating from Altiplano.

15. As a result of the widespread use and display of Altiplano and of clothing, handbags and jewelry: a) the public and the trade use the ALTIPLANO trademark to identify and

refer to Altiplano's brand; b) clothing, handbags and jewelry marked with the ALTIPLANO trademark are recognized by the trade and public as high quality premium clothing, handbags and jewelry emanating from a single source; and c) the trademark ALTIPLANO has built up secondary meaning and extensive goodwill.

ALTIPLANO INSULATION'S USE OF THE MARK ALTIPLANO

16. Altiplano Insulation, Inc. ("Altiplano Insulation") has been in business since 1999 and used its design mark ALTIPLANO INSULATION with the design of a mountain range in association with goods in International Class 25: namely jackets, coats and vests made from llama fiber. Altiplano Insulation was the owner of U.S. trademark registration 2,918,297. That trademark registration was cancelled on August 21, 2015 for Altiplano Insulation's failure to file an acceptable declaration for continued use of the mark in commerce.

17. Altiplano Insulation's trademark application for use of the mark ALTIPLANO with the design of a llama in association with the described goods was filed on February 8, 2013 and alleged use of its mark began as early as October 2011.

18. Altiplano Insulation was subsequently issued U.S. Trademark Registration 4,457,908 for use of the mark ALTIPLANO with the llama design in association with Capes; Coats; Jackets; Pullovers; Shirts; Sweaters; and Vests on December 31, 2013.

19. Altiplano has filed a petition to cancel U.S. Trademark Registration 4,457,908 with the United States Patent and Trademark Office.

20. Altiplano Insulation has since filed an application for registration of the word mark ALTIPLANO, application serial number 86/903328, which is identical to Altiplano's

ALTIPLANO word mark and application for registration in terms of appearance, sound, connotation and commercial impression.

21. Upon information and belief, Altiplano Insulation has sold products throughout the United States in association with the design mark ALTIPLANO.

22. On September 1, 2016, Altiplano Insulation shipped a hat with the ALTIPLANO design mark to Killington, Vermont.

23. Altiplano has not authorized Altiplano Insulation to use the mark ALTIPLANO in association with any products.

24. Altiplano Insulation's advertisements, promotional mailings, sales, and shipments are likely to cause confusion, mistake, and/or deception as to the source of origin of Altiplano Insulation's advertised products in that the public, the trade and others are likely to believe that Altiplano Insulation's advertised products are provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Altiplano and that the goods advertised, sold, and shipped by Altiplano Insulation and Altiplano are provided by, sponsored by, approved by, and/or licensed by the same source.

25. Altiplano has no control over the nature, quality or pricing of Altiplano Insulation's products, advertising or any other aspect of the business conduct of Altiplano Insulation. Any failure, neglect or default by Altiplano Insulation in providing pricing or advertising products labeled with the ALTIPLANO Trademarks will reflect adversely on Altiplano, thus hampering efforts by Altiplano to continue to protect its outstanding reputations for premium clothing, handbags and jewelry resulting in loss of sales of genuine ALTIPLANO products and thwarting

Altiplano's considerable efforts and expenditures to promote their genuine products under the ALTIPLANO Trademarks.

26. Upon information and belief, Altiplano Insulation's sales of its products in association with the mark ALTIPLANO has created consumer confusion by suggesting the false designation of Altiplano Insulation products as those being produced by Altiplano, Inc.

COUNT ONE
TRADEMARK INFRINGEMENT AND
FALSE DESIGNATION OF ORIGIN

27. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1 through 26 as though fully set forth herein.

28. Altiplano Insulation's acts, as alleged, constitute trademark infringement, false designation of origin, false representation and false description in violation of the Lanham Act, Section 43(a), 15 U.S.C. § 1125(a), all to the substantial and irreparable injury of the public and of Altiplano's business reputation and goodwill.

29. Upon information and belief, by such wrongful acts, Altiplano Insulation has and unless restrained by the Court, will continue to cause serious irreparable injury and damage to Altiplano and to the goodwill associated with their trademarks, including diversion of customers, lost sales and lost profits.

30. Altiplano has no adequate remedy at law.

COUNT TWO
COMMON LAW UNFAIR COMPETITION

31. Altiplano repeats and re-alleges each and every allegation of paragraphs 1 through 28 as though fully set forth herein.

32. Altiplano Insulation's aforementioned acts constitute unfair competition under the common law, because of Altiplano Insulation, Inc.'s deceptive use and appropriation of Altiplano's trademark.

33. Altiplano has been damaged by the Altiplano Insulation's aforementioned acts.

PRAYER FOR RELIEF

WHEREFORE, Altiplano prays for an order of the Court:

A. Granting a preliminary and permanent injunction restraining Altiplano Insulation its officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting in concert or participation with it, from:

- i) infringing Altiplano's trademark rights; and
- ii) unfairly competing with Altiplano.

B. Directing Altiplano Insulation to use its best efforts to recall from the trade and other third parties any and all infringing goods namely articles of clothing made from llama fiber and any marketing, advertising and promotional materials used in connection therewith;

C. Directing Altiplano Insulation to file with the Court and serve on counsel for Altiplano, within thirty days after entry of any injunction issued by the Court in this action, a

sworn statement as provided in 15 U.S.C. § 1116 setting forth in detail the manner and form in which Altiplano Insulation has complied with the injunction;

D. Directing Altiplano Insulation to deliver up to Altiplano for destruction or other disposition, within thirty days of the entry of final judgment herein, any and all infringing namely articles of clothing made from llama fiber and any promotional, marketing, advertising, and promotional materials used in connection therewith, now or hereafter in its possession, custody or control;

E. Directing Altiplano Insulation to account to Altiplano for any and all profits derived by Altiplano Insulation from the sale of goods bearing the infringing trademark;

F. Awarding Altiplano a monetary judgment against Altiplano Insulation for Plaintiff's damages and Altiplano Insulation's profits pursuant to 15 U.S.C. § 1117;

G. Trebling the amount of such award on account of Altiplano Insulation's willful, intentional, and bad faith conduct pursuant to 15 U.S.C. § 1117;

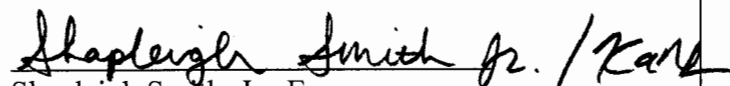
H. Awarding Altiplano its reasonable attorneys' fees, costs and disbursements incurred herein in view of Altiplano Insulation's intentional and willful infringement, pursuant to 15 U.S.C. § 1117; and

I. Awarding Altiplano such other and further relief as the Court may deem just and proper.

DATED at Burlington, Vermont, this 19th day of October, 2016.

Respectfully submitted,

DINSE, KNAPP & McANDREW, P.C.



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